89.

SUPREME COURT OF THE UNITED STATES.

No. 114.

WM. LEWIS, WHO SUES FOR THE USE OF NICHOLAS LONGWORTH, PLFF.,

vs.

THOMAS LEWIS, ADM'OR DE BONIS NON OF MOSES BROADWELL, DECEASED.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S., FOR THE DISTRICT OF ILLINOIS.

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J. & G. S. Gideon, printers.

WILLIAM LEWIS, who sues for the use of Nicholas Longworth,
vs.
THOMAS LEWIS, administrator de bonis non of Moses Broadwell, deceased.

Pleas in the circuit court of the United States of America for the district of Illinois, held at the city of Springfield, in the district aforesaid, before the honorable John McLean, one of the justices of the Supreme Court of the United States of America, presiding, and the honorable Nathaniel Pope, judge of the district court of the United States for the district of Illinois, associate judges of said circuit court, on Tuesday, the tenth day of June, in the year of our Lord one thousand eight hundred and forty-five, and of our independence the 69th year.

WM. POPE, *Clerk*.

The plaintiff filed his declaration in this cause, which is in the words and figures following:

UNITED STATES OF AMERICA,
District of Illinois:

Circuit court of the United States for the district of Illinois, December term, 1843.

William Lewis, who sues for the use of Nicholas Longworth, citizens of the State of Ohio, residing in said State, plaintiff in this suit, complains of Thomas Lewis, defendant, a citizen of the State of Illinois, administrator de bonis non of all and singular the goods and chattels, lands and tenements, rights and credits, of Moses Broadwell, deceased, in custody, who has been summoned, by the marshal of the United States for the district of Illinois, to answer, &c., of a plea of covenant broken; for that whereas, heretofore, in the lifetime of the said Moses Broadwell, since deceased, to wit, on the twelfth day of March, in the year of our Lord one thousand eight hundred and nineteen, at the county of Clermont, in the State of Ohio, to wit, in the circuit and State aforesaid, the said Moses Broadwell, by his indenture of that date, duly executed, acknowledged, and recorded, (a copy of which is now shown to the court here,) with his wife, Jane Broadwell, granted, bargained, sold, aliened, released, conveyed, and confirmed, unto the said William Lewis, his heirs and assigns forever, all that certain tract of land lying and being in Hamilton and Clermont counties, being part of William Moseley's survey, made by virtue of a military warrant, number 115, in the Virginia military district, on the waters of the Little Miami, beginning at three beeches N. E. corner to Nathan Sutton, and in the line of Matthews' survey, and with it north seven west, one hundred and ninety-three poles, to John Broadwell's S. E. corner; thence, with his lines, their several courses, south eighty-nine west sixty-two poles;

thence, north seven degrees east, forty-seven poles; thence, north fifty-five degree west, fourteen poles to the southeast corner of Timothy Day, and with his line south eighty-seven west, one hundred and sixty-six poles to a stake, S. E. corner to John Rose, and with his line west two hundred and three poles, to said Rose's southwest corner; thence, south, forty-three poles, to James Phillips' N. W. corner; thence, with said Phillips' line, their several courses, south fifty-six and a half east twenty-eight poles, north eighty-five east eighteen poles, south seventy-one and a half east fifty-four poles, north sixty-eight east twenty-eight poles, south eighty-five east fourteen poles, south twenty-four poles to Dominicus Abbott's N. W. corner, and with said Abbott's lines east sixty-four poles, south fifty-eight east eighty-five poles, to three beeches; thence, south seventy-four poles; thence, with Sutton's lines, east thirty-six poles, south thirty-three poles, to Nathan Sutton's line, and with it north eighty-nine east one hundred and sixty-two poles to beginning; containing 390 acres, more or less, for the consideration of nine thousand five hundred dollars by the said William Lewis to the said Moses Broadwell, by the said indenture acknowledged to be paid. And the said Moses Broadwell covenanted and agreed, by the said indenture with the said William Lewis, that he, the said Moses Broadwell and Jane his wife, were the true and lawful owners of the premises above described, and had good right, full power, and lawful authority, to sell and convey the same in manner aforesaid; and the said Moses Broadwell did further covenant and agree, by the said indenture, to and with the said William Lewis, that he, the said Broadwell and Jane his wife, their heirs, executors, and administrators, would warrant and forever defend the aforesaid premises, with their appurtenances and every part and parcel thereof, unto the said William Lewis, his heirs and assigns, against all persons claiming or to claim by, from, or under them, or any of them, or by, from, or under any other person or persons whomsoever; and the said plaintiff avers, that at the time of sealing and delivering of the indenture aforesaid, the said Moses Broadwell and Jane his wife, were not the true and lawful owners of the premises granted by the said indenture, and had not good right, full power, and lawful authority to sell and convey the same in manner and form aforesaid; nor could the plaintiff, by force of said indenture, lawfully possess and enjoy the same, free from all incumbrances, according to the said Moses Broadwell's covenant as aforesaid; and so the said Broadwell has broken his covenant as aforesaid.

And the said plaintiff further avers, that the said Moses Broadwell, in his lifetime, and the said administrator as aforesaid, since his decease, his covenant so as aforesaid made, hath not kept, but hath broken the same, in this, to wit, the said Moses Broadwell, now deceased, was not the true and lawful owner of said premises, and had not good right, full power, and lawful authority, to sell the same; neither did the said Moses Broadwell, in his lifetime, nor the said administrator aforesaid, since his decease, warrant and defend the said premises to the said Wm. Lewis, as by his said covenant he was bound to do; but, on the con-

trary thereof, at the time of making the indenture aforesaid, one Matthews was the true and lawful owner of a large part of said premises, to wit, of one hundred acres. And the said Matthews, by the consideration and judgment of the circuit court of the United States, for the 7th circuit and district of Ohio, sitting at Columbus, in said State, at the June term, 1825, recovered judgment against the said William Lewis, ejecting and expelling him from the possession of said one hundred acres of the said premises as aforesaid, whereof the said Broadwell had due notice. By reason of all which said premises, the said plaintiff hath not only entirely lost and been deprived of the said one hundred acres of land as aforesaid, and of divers large sums of money, amounting in the whole to dollars, laid out and expended by the said plaintiff in and upon the said premises; but hath also been obliged to pay the costs and charges sustained in defending said suit as aforesaid, which amounted to a large sum, to wit, to dollars.

Wherefore, the said plaintiff saith he is injured, and hath sustained damages to the amount of three thousand dollars. And therefore he brings suit, &c.

ROBBINS & SMEDES, *P. Q.*

To which declaration the defendant filed four several pleas, of which the fourth is in the words and figures following, to wit:

And for further plea in this behalf, the said defendant says, plaintiff action non, because he says the cause of action in the said plaintiff's declaration stated and set forth, did not accrue within sixteen years next preceding the commencement of this suit; and of this he puts himself upon the country, &c.

LOGAN & LINCOLN, *P. D.*

To which said plea the plaintiff filed his replication, and the defendant filed a demurrer to the same, in which plaintiff joined; which said replication and demurrer are in the words and figures following: And the said plaintiff, as to the said plea of the said defendant by him fourthly above pleaded, says, that by any thing in said plea alleged, said plaintiff (precludi non,) because he says that at the time when the said causes of action and each of them did accrue to him, he, the said plaintiff, was in parts beyond the limits of this, to wit, in the State of Ohio, and has ever since remained, and yet is, beyond the limits of this State, to wit, in the State of Ohio; and that on the 9th day of July, 1827, Nathan Cromwell was appointed administrator of the estate of Moses Broadwell, deceased, and that said administrator made his last settlement 30th October, 1828, declaring said estate solvent for 27 cents on the dollar only; and removed from this State on his way to Texas, and died at St. Louis, in the State of Missouri, in July 1836; and that Thomas Lewis, the said plaintiff, was appointed administrator de bonis non of said estate, on the 19th day of January, 1843; and that from July, 1836, to 19th January, 1843, a period of more than six years, there was no administrator on said estate, and no one in existence who

could be sued; all which the said plaintiff is ready to verify. Wherefore, he prays judgment for his damages, &c.

ROBBINS, *For plff.*

And the said defendant for rejoinder to the replication of the said plaintiff to this fourth plea says, the plaintiff ought not to have *to* maintain his said action by reason of any thing in his said replication alleged, because he says that the plaintiff's said replication, and the matters and things therein contained, are not good and sufficient in law for the plaintiff to have and maintain his said action; and this the defendant is ready to verify. Wherefore, he prays judgment, &c.

LOGAN, *P. D.*

And the said demurrer to the said replication having been argued before the court, the opinions of the judges of the circuit court were opposed upon the following point, viz:

Whether, upon the facts set forth in said replication to the said fourth plea of the defendant, the cause of action is barred by the acts of the legislature of the State of Illinois, entitled "an act for the limitation of actions, and for avoiding vexatious law suits, approved February 10, 1827, and the act, entitled "an act to amend an act, entitled "an act for the limitation of actions and for avoiding vexatious law suits," approved February 11, 1837.

The following are the said acts of the legislature of the State of Illinois, referred to:

"An act for the limitation of actions for avoiding vexatious law suits.

Sec. 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that all actions of trespass, quare clausum fregit, all actions of trespass, detinue, trover, and replevin, for taking away goods and chattels, all actions for arrearages of rent due on a parol demise, and all actions of account, and upon the case, except actions for slander, and except also actions for malicious prosecution, and such actions as concern the trade of merchandise, between merchant and merchant, their factors or agents, shall be commenced within five years next after the cause of such actions shall have accrued, and not after.

Sec. 2 That all actions of trespass for assault, battery, wounding, and imprisonment, or any of them, shall be commenced within two years next after the cause of such actions shall have accrued, and not after.

Sec. 3. That every action upon the case for words shall be commenced within one year next after the words spoken, and not after; and every action for malicious prosecution shall be commenced within two years next after the cause of action shall have accrued, and not after.

Sec. 4. That every action of debt, or covenant for rent, or arrearages of rent, founded upon any lease under seal, and every action of debt or covenant, founded upon any single or penal bill, promissory note or writing obligatory, for the direct payment of money, or the delivery of

property, or the performance of covenants, or upon any award under the hands and seals of arbitrators, for the payment of money only, shall be commenced within sixteen years after the cause of such action shall have accrued, and not after; but, if any payment shall have been made on any such lease, single or penal bill, promissory note, writing obligatory, or award, within sixteen years after such payment shall be good and effectual in law, and not after.

Sec. 5. That judgment in any court of record in this State may be revived by scire facias, or an action of debt may be brought thereon, within twenty years next after the date of such judgment, and not after.

Sec. 6. That no person who now hath, or hereafter may have, any right of entry into any lands, tenements, or hereditaments, shall make an entry therein, but within twenty years next after such right shall have accrued, and such person shall be barred from any entry afterwards.

Sec. 7. That every real, possessory, ancestral, or mixed action, or writ of right, brought for the recovery of any lands, tenements, or hereditaments, shall be brought within twenty years next after the right or title thereto, or cause of such action accrued, and not after: Provided, that in all the foregoing cases in this act mentioned, where the person or persons, who shall have right of entry, title or cause of action, is, are, or shall be, at the time of such right of entry, title or cause of action, under the age of twenty-one years, insane, beyond the limits of this State, or *feme covert*, such person or persons may make such entry, or institute such action, so that the same be done within such time as is within the different sections of this act, limited after his or her becoming of full age, sane, feme sole, or coming within this State.

Sec. 8. That if any person or persons, against whom there is or shall be any cause of action, as if specified in the preceding sections of this act, except real or possessory actions, shall be out of this State at the time of the cause of such action accruing, or any time during which a suit might be sustained on such cause of action, then the person or persons who shall be entitled to such action shall be at liberty to bring the same against such person or persons after his, her, or their return to this State; and the time of such person's absence shall not be accounted or taken as a part of the time limited by this act.

Sec. 9. That if, in any of the said actions specified in any of the preceding sections of this act, judgment be given for the plaintiff, and the same be reversed by writ of error, or upon appeal; or if a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff; or if the plaintiff be non-suited, then, if the time limited for bringing such action shall have expired during the pendency of such suit, the said plaintiff, his or her heirs, executors or administrators, as the case shall require, may commence a new action within one year after such judgment reversed or given against the plaintiff, and not after.

Sec. 10. The eighth section of the act, entitled "an act regulating

the practice in the supreme and circuit courts of this State, and for other purposes," approved March 22, 1819, and the act entitled "an act of limitations, relating to lands and tenements," approved February 18, 1823, be, and are hereby, repealed: Provided, that the rights and defences which have accrued or arisen under the acts hereby repealed, shall not be affected or impaired by the passage of this act. Provided, further, that where the acts hereby repealed have commenced running, the time the same shall have run against any cause of action hereby shall be computed part of the time limited by this act; this act to take effect and be in force on the first day of June next. Approved Feb. 10, 1827.

An act to amend an act, entitled "an act for the limitation of actions, and for avoiding vexatious law suits." Approved Feb. 11, 1837.

Sec. 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the proviso to the seventh section of the act to which this is an amendment, shall not be held to extend to any non-resident, unless such non-resident be under the age of twenty-one years, insane, or feme covert, and then in that case the rights of such persons shall be saved for the time limited by the different sections of said act, after his or her becoming of full age, sane, or feme sole. Approved Feb. 11th, 1837.

I, William Pope, clerk of the circuit court of the United States of America, for the district of Illinois, do certify the foregoing to be true and correct copies of declaration, defendant's 4th plea, plaintiff's replication, and defendant's demurrer to the same, as the same appear on file in my office.

In testimony whereof, I have hereunto affixed the seal of said court, and subscribed my name, this 17th day of November, A. D.
[SEAL.] 1845, and of our independence the 70th year.

WM. POPE, *Clerk*.

Filed January 21, 1846.

894.

UNITED STATES OF AMERICA,
District of Illinois:

At a circuit court of the United States, for the district of Illinois, began and held at Springfield, in said district, on Monday, the 5th day of June, in the year of our Lord one thousand eight hundred and forty-eight, and in the 72d year of our independence.

Present: The hon. John McLean and Nathaniel Pope, esquires.

WILLIAM LEWIS, who sues for the use of Nicholas Longworth,
vs.
THOMAS LEWIS, administrator de bonis non of Moses Broadwell, deceased.
} In covenant.

This cause having been heretofore certified to the supreme court on points on which the opinion of the judges were opposed. Now, the undersigned counsel for the parties consent, that the record made in the case in regard to the points certified shall be modified as follows, viz:

"1st. Whether the statute of 1827 begins to run from the time of the repeal of the saving clause in 1837, or from the time the debt became due?

"2d. Whether the statute began to run before administration was granted?

"3d. Whether the period which elapsed between the two administrations mentioned in the replication is to be deducted from the period of the statute of limitations of 1827?

I, William Pope, clerk of the circuit court of the United States, for the district of Illinois, do hereby certify the foregoing to be a true and correct copy from the record.

Given under my hand and seal of office, this 9th day of November, in the year of our Lord one thousand eight hundred and forty-eight.

[L. S.]

WILLIAM POPE, *Clerk*.